

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

Filed: February 11, 2021

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JESSICA DAVIS, *parent of* *

C.D., *a minor,* *

*

Petitioner, *

No. 19-410V

*

v. *

Special Master Gowen

*

SECRETARY OF HEALTH *

AND HUMAN SERVICES, *

*

Respondent. *

* * * * *

SCHEDULING ORDER

On February 4, 2021, a status conference was held in the above-captioned matter. Ms. Meredith Daniels appeared on behalf of petitioner. Ms. Kimberly Davey appeared on behalf of respondent.

This claim relates to the minor child C.D.'s receipt of Pediarix (conjugated vaccine containing diphtheria-tetanus-acellular pertussis ("DTaP"), hepatitis B ("hep B"), and polio), pneumococcal vaccine, and rotavirus vaccine on January 13, 2017, when she was approximately two months old.

The first question is the nature of C.D.'s injury. Her medical records reflect that a number of diagnoses were entertained, most prominently transverse myelitis ("TM"). Petitioner's expert Yuval Shafrir, M.D. opines that the correct diagnosis is acute disseminated encephalomyelitis ("ADEM") with brainstem and cervical spinal cord involvement. Pet. Ex. 26 at 51. Respondent's expert Tim Lotze, M.D. disagrees that C.D. meets the diagnostic criteria for ADEM. Resp. Ex. A at 9-11. Dr. Lotze opines that the proper diagnosis is "viral rhombencephalitis with myelitis producing cranial nerve dysfunction and acute flaccid paralysis (i.e., acute flaccid myelitis('AFM'))" with the most likely etiology being a virus that was not identified in laboratory testing. Resp. Ex. A at 4-7. In past cases I have had occasion to review the diagnostic criteria for TM, ADEM, and AFM. This case is different given the progression of symptoms, specific areas of the central nervous system that were implicated, and the child's very young age. I did not offer a complete discussion of the expert reports. However, initially I am inclined to think that Dr. Lotze is minimizing the mother's observation that after the vaccinations, C.D. developed irregular eye movements which represented the onset of her neurological condition. I also agreed that it would be difficult to conduct a neurological evaluation in such a young child. I noted that the first cluster of cases of AFM was in fall 2014, followed by recurrences in fall 2016 and fall 2018. This child's presentation in spring 2017 was

outside of that biannual pattern although it would seem likely that the treating neurologists would be aware of that condition, which was newsworthy and prompted creation of a specific working group funded by the Centers for Disease Control and Prevention (“CDC”).

During the status conference, Ms. Daniels confirmed that the Davis family is living in Horsham, Pennsylvania and that C.D. goes to Children’s Hospital of Philadelphia (CHOP) for some medical appointments. When compared to the early acute stage of her injury, C.D. has made significant improvements and her development is not delayed. However, she still has facial paralysis, which necessitates use of a gastrostomy tube (G-tube) for feeding and hydration and another device for communication. She participates in speech, occupational, and physical therapies each week which are currently occurring remotely due to the COVID-19 pandemic. On account of the injury at issue in this claim, C.D. became eligible for Medicaid first in Arizona and now in Pennsylvania.

I did not discuss my tentative views and preliminary conclusions pursuant to Vaccine Rule 5. Instead it was agreed that petitioner would file updated medical records. Dr. Shafrir would review whether there have been any significant changes to the understanding of C.D.’s condition and have the option of submitting a response to Dr. Lotze. Afterwards another status conference will be convened.

The following is **ORDERED**:

- 1) Petitioner shall file updated medical records, a supplemental statement of completion, and any responsive expert report from Dr. Shafrir within 45 days, by Monday, March 29, 2021.

Any questions may be directed to my law clerk, Kate Burmeister, at (202) 357-6375 or kate_burmeister@cfc.uscourts.gov.

IT IS SO ORDERED.

s/Thomas L. Gowen

Thomas L. Gowen
Special Master